

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

**RECEIVED**

**JUL 21 1993**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MM Docket No. 92-266

In the Matter of )  
 )  
Implementation of Sections )  
of the Cable Television )  
Consumer Protection and )  
Competition Act of 1992 )  
 )  
Rate Regulation )

To: The Commission

**OPPOSITION OF  
LIBERTY CABLE COMPANY, INC.  
TO  
PETITIONS FOR RECONSIDERATION**

Liberty Cable Company, Inc. ("Liberty"), pursuant to Section 1.429(f) of the Commission's Rules, by its attorneys, hereby submits its Opposition to certain portions of the Petitions for Reconsideration filed by Tele-Communications, Inc. (pp. 17-21), National Cable Television Association, Inc. (p. 34), Colony Communications, Inc. et al. (pp. 20-22) ("Colony"), Viacom International Inc. (p. 17), Comcast Cable Communications, Inc. (pp. 12-17) ("Comcast"), Continental Cablevision, Inc. (pp. 13-15) ("Continental"), and Booth American Company et al. (pp. 43-44) (jointly "Petitioners") in the above-referenced proceeding.

1. Petitioners request the Commission to reconsider, inter alia, ¶ 424 of the First Report and Order (the "Order") in this

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proceeding.<sup>1/</sup> In that paragraph, the Commission adopted rules implementing the uniform rate provision of the Cable Act of 1992 which requires cable operators to offer a uniform rate structure throughout their service areas. Petitioners request an exemption

3. Liberty actively participated in this proceeding at both the comment and reply comment stage. Liberty's comments and reply comments provided clear evidence that its franchised cable competitor, Time Warner, has used non-uniform rates in a predatory manner to preclude Liberty from expanding its SMATV operations and has, thereby, interfered with Liberty's ability to compete meaningfully with Time Warner. Liberty is concerned that adoption of the exemption requested by Petitioners will endorse anti-competitive predatory pricing aimed at alternative technology distributors. Liberty wants the Commission to ensure that this type of predatory pricing will not be tolerated.

4. Petitioners complain that the Commission's uniform rate rules will unduly harm them by precluding them from persuading their subscribers to retain cable service by offering lower rates to those cable subscribers residing in MDUs who are contemplating switching from cable to the video distribution service of an alternative technology provider. Without the uniform rate requirement, the rates of such subscribers would be negotiated (on a building by building basis) as alternate providers attempt to convert building residents to an alternate technology service. The level of rates would be based on the rate the alternate provider has offered.

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<sup>4/</sup>(...continued)

<sup>4/</sup>Liberty will also be among the first video programmers in the U.S. to test "video dialtone" service and technology, beginning in 1993. See New York Telephone Company, Order and Authorization, FCC 93-302, rel. June 20, 1993.



competitor, Time Warner has approximately 585,000 subscribers in such MDUs. Without the prohibition on predatory pricing by franchised cable operators, alternate providers will not be able to develop to the point where a competitive market exists for any cable subscribers, including those in MDUs. The prohibition on predatory pricing will not lessen competition but, instead, will foster the development of alternate providers and enable them to compete effectively in MDU and non-MDU markets.

7. Comcast further argues that there is no evidence of predatory pricing by cable operators to warrant a requirement for uniform rates. To the contrary, Liberty's comments and reply comments in this proceeding are replete with evidence of predatory pricing by its franchised competitor, Time Warner. For example, during the past year, each time Liberty approached a MDU, hotel or institutional user to interest it in switching to Liberty's service, Time Warner offered the MDU, hotel or institution a rate lower than Liberty's rate. The lower rate was at least 25% lower than Time Warner's normal rate. Worse, many hotels were told that Time Warner would do anything it took (i.e., lower its rate to whatever level was necessary) to keep the hotel as a customer.<sup>7/ 8/</sup>

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<sup>7/</sup> See Liberty's Comments, pp. 5-6.

<sup>8/</sup> Such predatory pricing not only impedes the ability of an alternate provider to compete effectively with its franchised cable competitor, it also results in price discrimination among cable subscribers in the same service area. For example, Time Warner recently began offering "bulk" discounts to larger MDUs in Manhattan. The residents of such MDUs typically are Time Warner's most affluent subscribers. The discounts are not offered to residents of smaller MDUs in Manhattan or to MDU residents in  
(continued...)




WHEREFORE, for the foregoing reasons, Liberty respectfully requests that those portions of the Petitioners' Petitions for Reconsideration discussed herein be denied.

Respectfully submitted,

LIBERTY CABLE COMPANY, INC.

By:

  
Henry M. Rivera  
Ann Bavender

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July 21, 1993

Its Attorneys

W. JAMES MacNAUGHTON, ESQ.

EXHIBIT 1

*Attorney at Law*

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July 2, 1993

New York State Commission  
on Cable Television  
Tower Building  
Empire State Plaza  
Albany, New York 12223

Re: In the Matter of Petition for Declaratory  
Ruling On the Institution of Selected Bulk  
Rates By Time Warner Cable of New York City  
and Paragon Cable Manhattan  
Docket No.

Dear Sirs:

Enclosed for your information please find a copy of a letter dated July 2, 1993 from Andrew S. Berkman, counsel for Liberty Cable, to the New York City Department of Consumer Affairs and the Department of Telecommunications and Energy concerning misrepresentations made by Time Warner Cable for the introduction of bulk rates in New York City. As Mr. Berkman points out, Time Warner has been representing that its bulk rate agreement has been approved by the State of New York. That simply is not true.

Moreover, there is no indication that Time Warner has complied with its agreement with the Department of Telecommunications and Energy to timely notify all building owners of the availability of a bulk rate. It appears that Time Warner continues to offer bulk rates selectively and only in response to direct competition from Liberty Cable.

Sincerely,

  
W. James MacNaughton

WJM:lw

Enclosure

cc: W. Squadron, Dept. of Telecom. & Energy  
R. Aurelio, Time Warner  
J. Oppenheim  
P. Price  
A. Berkman  
W. Koplovitz

Admitted in New Jersey and New York



**Andrew S. Berkman**  
Attorney at Law

COUNSEL  
LIBERTY CABLE

July 2, 1993

Susan Kassapian, Esq.  
New York City Department of  
Consumer Affairs  
42 Broadway  
New York, NY

David Bronston, Esq.  
New York City Department of  
Telecommunications and Energy  
75 Park Place  
New York, NY

Re: Time Warner Cable/Bulk Rates

Dear Ms. Kassapian and Mr. Bronston:

I enclose a copy of a letter received June 18, 1993 by a subscriber to Manhattan Cable TV.

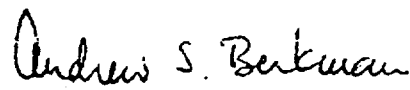
Please note the following:

1. The Bulk Rate postage paid envelope is not otherwise dated or stamped in order to verify when the letter was mailed or that the notice was timely given under the 11/18/92 agreement made by Time Warner with DTE;
2. The first MCTV letter (marked by me) is dated 4/93, and contains incomplete and misleading information, as the State of New York has clearly not authorized Time Warner to enter into bulk rate agreements;
3. It seems clear that the text of the Bulk Rate Notice (marked by me) must reflect, in order not to mislead any consumer or any building, that the Bulk Rate Agreement approved by DTE is not yet finally approved and available for execution, that additional significant terms and conditions (including the landlord obligation in respect of converters and the right of a landlord to keep the "spread" between the bulk rate and the Current Rate (as such term is used in the Agreement) are a requirement of any bulk rate contract.

Lib/ltrs/Jun93

4. It would also be appropriate to note that no application (to my knowledge at least) has been made to DHCR for rental regulatory approval; I believe it is likely that the Bulk Rate Agreement may run afoul of the existing rent control/rent stabilization laws in the City of New York.
5. Finally, it would be in order for both agencies to examine the sample bulk rate contract offered to at least one building (303 East 57th Street) in order to determine a) whether the format utilized creates a consumer problem in light of the questions raised herein, and b) whether the variance in format from the contract approved on 11/18/92 by DTE raise a question of good faith compliance with the original approval.

Very truly yours,



Andrew S. Berkman

ASB/jal

encs.

cc: Robert Jacobs, Esq.  
James MacNaughton, Esq.

120 East 23rd Street  
New York, NY 10010

BULK RATE  
US POSTAGE  
**PAID**  
TIME WARNER CABLE  
OF NEW YORK CITY



TIME WARNER  
CABLE OF NEW YORK CITY

ASB

HOWARD MILSTEIN  
888 PARK AVE # 88  
NEW YORK NY 10021-0235



T I M E W A R N E R  
C A B L E

Dear Building Resident:

We thought you would be interested to know, that we've been authorized by the City and State of New York to enter into bulk rate agreements for buildings such as yours. Enclosed, please find a copy of our bulk rate notice which was recently sent to your agent/owner/board president.

By entering into a bulk rate agreement, we are able to discount certain rates by 25%. In addition, each tenant is still able to purchase all of our other services at our regular rates.

If you are interested in having your building pursue a bulk rate



T I M E W A R N E R  
C A B L E OF NEW YORK CITY

To Whom it May Concern:

Time Warner Cable of New York City has been authorized by the City of New York to offer bulk discounts to the owners of apartment buildings with 15 or more dwelling units.

We are prepared to offer you a 25% discount each month on your choice of the following service packages:

- (1) Broadcast Basic Service (current retail price \$14.95 per month);  
total discounted bulk rate \$11.21, a monthly savings of \$3.74 per unit.
- (2) Broadcast Basic Service and the Standard Service tier  
(current retail price \$14.95 + 7.00 = \$21.95 per month);  
total discounted bulk rate \$16.46, a monthly savings of \$5.49 per unit.
- (3) Broadcast Basic Service and the Standard Plus Service tier  
(current retail price \$14.95 + 8.00 = \$22.95 per month);  
total discounted bulk rate \$17.21, a monthly savings of \$5.74 per unit.

In return for the 25% discount, you must agree to purchase the selected level of service for 100% of the dwelling units in your building.

If you are interested in pursuing a bulk discount for your building, please contact Elaine Valdez at 598-1728. In addition, please contact us if you believe your building has any further cable-related needs.

We look forward to serving you for many years to come.

Sincerely,

Edward Olsen  
Accounts Manager,  
Condominiums and Coops  
Time Warner Cable of New York City

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition to Petitions For Reconsideration was served, this 21st day of July, 1993, by U.S. mail, first-class postage prepaid, upon the following:

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